ARTICLE 3. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in Civil Cases Generally.

In a civil case, unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

Comment to 2012 Amendment

The language of this rule has been added to conform to Federal Rule of Evidence 301, as restyled.

Rule 302. Applying State Law to Presumptions in Civil Cases.

< Rule not adopted >

Comment to 2012 Amendment

Federal Rule of Evidence 302 has not been adopted because it is inapplicable to state court proceedings.

Comment to Original 1977 Rule

Federal Rule of Evidence 302 was not adopted because of the non-adoption of Rule 301. No other purpose was intended.

Cases

301. In general.

301.010 The general rule is that a presumption serves to shift the burden of producing evidence, unless the substantive common law or legislative enactment giving rise to the presumption compels the conclusion that the presumption shifts the burden of persuasion to the party opposing the presumed fact.

Golonka v. General Motors Corp., 204 Ariz. 575, 65 P.3d 956, ¶¶ 4, 36–44, 50–51 (Ct. App. 2003) (plaintiff was killed when her idling truck shifted into reverse and struck her as she stood behind truck; plaintiff sued defendant on basis of strict product liability (information defect) and negligence (failure to warn); jurors found for plaintiff; court held heeding presumption is viable in Arizona, and that heeding presumption shifted burden of production rather than burden of persuasion).

301.020 A rebuttable presumption vanishes when the opposing party provides contradictory evidence.

State v. Grilz, 136 Ariz. 450, 455, 666 P.2d 1059, 1064 (1983) (court stated that presumption of sanity placed on defendant burden of producing evidence sufficient to raise reasonable doubt about sanity; once defendant presented evidence contradicting presumption, presumption disappeared entirely, and jurors are bound to follow usual rules of evidence in reaching their ultimate conclusion of fact).

Englehart v. Jeep Corp., 122 Ariz. 256, 259, 594 P.2d 510, 513 (1979) (court held presumption of due care disappeared when rebutted by any competent evidence, and that evidence of decedent's intoxication was sufficient to destroy presumption of due care).

Englehart v. Jeep Corp., 122 Ariz. 256, 259, 594 P.2d 510, 513 (1979) (court held statutory presumption of intoxication arises from and gives meaning to substantive evidence of blood-alcohol, and while it can be rebutted, this statutory presumption does not vanish with presentation of contrary evidence).

Golonka v. General Motors Corp., 204 Ariz. 575, 65 P.3d 956, ¶¶ 53–54 (Ct. App. 2003) (plaintiff was killed when her idling truck shifted into reverse and struck her as she stood behind truck; plaintiff sued defendant on basis of strict product liability (information defect) and negligence (failure to warn); jurors found for plaintiff; court held that defendant introduced competent evidence to rebut heeding presumption).

State v. Martinez, 202 Ariz. 507, 47 P.3d 1145, ¶ 17 (Ct. App. 2002) (presumption under A.R.S. § 13–411(C) that person is presumed to act reasonably in using force in crime prevention).

Glodo v. Industrial Comm'n, 191 Ariz. 259, 264, 955 P.2d 15, 20 (Ct. App. 1997) (presumption that claimant does not intend to injure himself or herself).

Evans v. Liston, 116 Ariz. 218, 220, 568 P.2d 1116, 1118 (Ct. App. 1977) (presumption of undue influence in context of wills).

301.030 Whether the presumption has been rebutted is a preliminary question of the sufficiency of the evidence, which is for the trial court to decide.

State v. Grilz, 136 Ariz. 450, 455–56, 666 P.2d 1059, 1064–65 (1983) (court overruled prior authority that held it was for jurors to determine whether presumption had been rebutted).

Golonka v. General Motors Corp., 204 Ariz. 575, 65 P.3d 956, ¶¶ 52–54 (Ct. App. 2003) (plaintiff was killed when her idling truck shifted into reverse and struck her as she stood behind truck; plaintiff sued defendant on basis of strict product liability (information defect) and negligence (failure to warn); jurors found for plaintiff; court held that trial court should have determined whether defendant introduced sufficient evidence to rebut heeding presumption; court concluded defendant had introduced competent evidence to rebut presumption and thus trial court should not have given jurors instruction about presumption).

301.040 If the trial court determines the party opposing the presumption has presented sufficient evidence to rebut the presumption, the presumption vanishes and is of no further force and effect, so the trial court should not instruct the jurors about the presumption and should merely let the jurors determine the issues on the basis of the evidence presented.

State v. Grilz, 136 Ariz. 450, 454–56, 666 P.2d 1059, 1063–65 (1983) (court instructed jurors that defendant was presumed to be sane, but once evidence has been presented to raise question of defendant's sanity, state has burden of proving beyond reasonable doubt defendant was sane; court held giving of that instruction was not fundamental error).

Golonka v. General Motors Corp., 204 Ariz. 575, 65 P.3d 956, ¶¶ 52–55 (Ct. App. 2003) (plaintiff was killed when her idling truck shifted into reverse and struck her as she stood behind truck; plaintiff sued defendant on basis of strict product liability (information defect) and negligence (failure to warn); jurors found for plaintiff; court concluded defendant had introduced com-

petent evidence to rebut presumption, thus trial court erred by instructing jurors about presumption rather than finding that presumption had spent its force; court held that instruction improperly placed upon defendant burden of proof).

308. Causation — Heeding presumption in information defect strict products liability cases and failure-to-warn negligence cases.

308.010 The "heeding presumption" is a rebuttable presumption that allows the finder-of-fact to presume that the person injured by a product would have heeded an adequate warning if given.

Gosewisch v. American Honda Motor Co., 153 Ariz. 400, 404, 737 P.2d 376, 380 (1987) (plaintiff was thrown from ATC when it hit mound of sand; plaintiff's complaint alleged defendant was negligent for failing to warn, but at trial characterized case as strict products liability, in either case contending defendant was liable for not giving adequate warnings about dangers of ATC; jurors found for defendant; court noted some states have adopted heeding presumption; court does not decide whether or under what circumstances Arizona should adopt this approach, but held undisputed evidence that plaintiff did not heed any warnings would have rebutted presumption as matter of law).

Golonka v. General Motors Corp., 204 Ariz. 575, 65 P.3d 956, ¶¶ 4, 36–44 (Ct. App. 2003) (plaintiff was killed when her idling truck shifted into reverse and struck her as she stood behind truck; plaintiff sued defendant on basis of strict product liability (information defect) and negligence (failure to warn); jurors found for plaintiff; court held heeding presumption is viable in Arizona, but reversed because trial court gave incorrect instruction on presumption).

Dole Food Co. v. North Carolina Foam Ind., Inc., 188 Ariz. 298, 305–06, 935 P.2d 876, 883–84 (Ct. App. 1996) (plaintiff sued under strict liability and negligence for failure to warn adequately of product hazards; trial court granted defendant's motion for summary judgment; court reversed and held (1) heeding presumption does not dissipate in the face of contrary evidence and (2) presumption shifts burden of proof to defendant, thus it is jury question whether burden has been satisfied).

Sheehan v. Pima County, 135 Ariz. 235, 237–39, 660 P.2d 486, 488–90 (Ct. App. 1982) (plaintiff contracted polio after receiving Sabin Oral Polio Vaccine from defendant; plaintiff sued based upon strict liability in tort contending failure to warn rendered product defective; jurors found for defendant; plaintiff contended trial court erred in refusing to give heeding presumption; court held presumption disappears entirely upon introduction of any contradicting evidence, and because of contradicting evidence presented, plaintiff was not entitled to instruction based on presumption).

310. Causation — Workers' compensation cases.

310.010 For workers' compensation, the claimant has the burden of establishing that the injury arose out of the employment and occurred in the course of the employment; when an employee is found dead in a place where the employee's duties required the employee to be, or where the employee might properly have been in the performance of those duties during the hours of work, in the absence of evidence to the contrary, there is a presumption that the injury arose out of and in the course of the employment.

Hypl v. Industrial Comm'n, 210 Ariz. 381, 111 P.3d 423, ¶¶ 6–13 (Ct. App. 2005) (general discussion of presumption when injury resulted in claimant's death).

310.020 For workers' compensation, when the injury renders the claimant unable to testify about how the injury happened, and the claimant proves by a preponderance of the evidence that he or she is unable to remember or communicate the circumstances and cause of the injury due to the injury, and proves by a preponderance of the evidence that the injury occurred during the time and space limitations of employment, the presumption will be that the injury arose out of and in the course of the employment.

Hypl v. Industrial Comm'n, 210 Ariz. 381, 111 P.3d 423, ¶¶ 14–22 (Ct. App. 2005) (claimant was truck driver; officer observed claimant driving erratically away from his intended destination; medical examination showed claimant had skull fracture and blood on surface of brain; claimant was in coma for 8 hours after surgery; claimant had no memory how injury happened; court held that, if claimant could provide sufficient factual basis to allow inference that he was injured in time and space limitations of employment, he would be entitled to presumption that injury occurred in course of, and arose out of, his employment).

318. Civil proceedings.

318.010 The trial court has discretion to determine whether an inmate has the right to attend civil court proceedings, but there is a rebuttable presumption that an inmate is entitled to attend "critical proceedings," such as the trial itself.

Arpaio v. Steinle (Stewart), 201 Ariz. 353, 35 P.3d 114, ¶ 4 (Ct. App. 2001) (in civil proceeding, trial court had ordered sheriff to transport three AzDOC inmates to civil trial; court rejected sheriff's claim that statute only required sheriff to transport AzDOC inmates to criminal proceedings and that AzDOC was required to transport AzDOC inmates to civil proceedings).

332. Intent to injure.

332.010 A conclusive presumption of intent to injure arises when the insured commits an act virtually certain to cause injury, but does not apply when the insured lacks the mental capacity to act rationally.

Western Ag. Ins. v. Brown, 195 Ariz. 45, 985 P.2d 530, ¶¶ 7–8, 11 (Ct. App. 1998) (insured fired nine shots into his wife and her companion, and said to the dying companion, "This is the last marriage you'll ever break up"; insured was subsequently convicted of two counts of premeditated first-degree murder).

K.B. v. State Farm F. & C. Co., 189 Ariz. 263, 941 P.2d 1288 (Ct. App. 1997) (victim contended that defendant was so intoxicated he could not act intentionally; because defendant pled guilty to attempted child molestation, and because an attempted crime requires an intent to commit the crime, defendant was estopped from denying he acted intentionally; defendant allowed judgment to be entered against him and assigned his cause of action against insurance company in exchange for covenant not to execute; because victim obtained only those rights defendant had, and because defendant was precluded from denying he acted intentionally, victim was precluded from denying intentional acts under intentional acts exclusion of insurance policy).

340. Judgments.

340.025 Final judgments are presumed to be valid, and that includes the presumption that the defendant was represented by an attorney, thus if the state proves the existence of a prior conviction, it is presumed that the defendant was represented by an attorney; if, however, the defendant presents some evidence to overcome that presumption, the burden shifts to the state to prove that the prior conviction was constitutionally obtained.

State v. McCann, 200 Ariz. 27, 21 P.3d 845, ¶¶ 6–18 (2001) (in prosecution for aggravated DUI, state offered in evidence copies of defendant's two prior DUI convictions, but records did not disclose whether defendant was represented by attorney).

344. Judicial officers.

344.020 A trial judge is presumed to know the law and to apply it in making decisions.

State v. Moody, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 49–53 (2004) (court presumed trial court was aware of law and procedure for competency determination and followed that law).

State v. Moody, 208 Ariz. 424, 94 P.3d 1119, ¶ 81 (2004) (court presumed trial court was aware of law for attorney-client privilege and applied it correctly when denying defendant's motion to dismiss).

State v. Williams, 220 Ariz.331, 206 P.3d 780, ¶ 9 (Ct. App. 2008) (defendant committed first-degree murder; at resentencing, trial court imposed natural life sentence, but did not make special verdict; court stated defendant presented nothing to rebut presumption that judge is presumed to know law and to apply it in making decisions, nor did record suggest trial court did not consider proper factors in imposing sentence).

344.030 A trial judge is presumed to be free of bias or prejudice, thus a party moving for a change of judge for cause based on bias or prejudice has the burden of proving alleged facts by a preponderance of the evidence; bare allegations of bias and prejudice, unsupported by factual evidence, are insufficient to overcome the presumption and do not require recusal.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 37–40 (2006) (defendant contended trial judge was biased based on statements he made during trial of codefendant and evidentiary ruling he made; court held defendant failed to show bias or prejudice that would require disqualification).

State v. Smith, 203 Ariz. 75, 50 P.3d 825, ¶ 13 (2002) (defendant filed motion based on fact that victim's son was superior court juvenile probation officer, and victim's daughter-in-law had been judicial assistant to two judges and was presently superior court's case flow manager; defendant never alleged, and in fact disavowed, that trial judge had any actual bias, and nothing presented at hearing showed any bias, thus court held defendant failed to meet his burden of proof).

* *Cardoso v. Soldo*, ___ Ariz. ___, 277 P.3d 811, ¶ 19 (Ct. App. 2012) (plaintiff-appellant failed to make necessary showing).

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶¶ 11–13 (Ct. App. 2011) (defendant was charged with two counts of continuous sexual abuse of child; court held mere fact that trial court set bond at $75 million in cash was insufficient to meet defendant's burden).

State v. Ramsey, 211 Ariz. 529, 124 P.3d 756, ¶¶ 37–38 (Ct. App. 2005) (defendant was charged with continuous sexual abuse of child, his 12-year-old daughter; defendant contended judge was biased against him because judge referred to daughter as "victim"; court noted that same judge had presided over separate trial wherein defendant was convicted of furnishing obscene or harmful materials to daughter, thus daughter was, in fact, a victim).

State v. Hurley, 197 Ariz. 400, 4 P.3d 455, ¶¶ 18–25 (Ct. App. 2000) (trial judge was assigned to courtroom that was adequate for only 8 jurors, so trial court asked parties about number of jurors; when prosecutor opined that conviction of charge and alleged priors would require 12-person jury, trial court stated that, if prosecutor dismissed one or more priors, defendant would be entitled only to 8-person jury, which might make it easier to convict defendant; defendant filed motion for change of judge, alleging judge's legal advice to prosecutor showed judge was biased against defendant; court held defendant failed to rebut presumption that judge is presumed to be free of bias and prejudice).

State v. Medina, 193 Ariz. 504, 975 P.2d 94, ¶¶ 9–13 (1999) (defendant contended judge should have recused himself because he had presided over earlier trial for aggravated assault and robbery, which were used as aggravating circumstances for present murder conviction; defendant filed neither Rule 10.1 motion nor motion for new trial, and thus presented no reason to question judge's impartiality).

Pavlik v. Chinle Unif. Sch. Dist., 195 Ariz. 148, 985 P.2d 633, ¶ 11 (Ct. App. 1999) (applies this presumption to school board considering whether to dismiss teacher).

344.035 A trial judge is presumed to be free of bias or prejudice; the bias and prejudice necessary for disqualification must arise from an extra-judicial source and not from what the judge has done in participating in the case.

Simon v. Maricopa Medical Center, 225 Ariz. 55, 234 P.3d 623, ¶¶ 29–30 (Ct. App. 2010) (*pro se* plaintiff contended trial judge's consistent pattern of adverse rulings showed bias and justified reversal; because plaintiff alleged no facts other than judge's rulings, plaintiff failed to demonstrate judicial bias).

344.040 When the trial court makes a ruling, or in a trial to the court, it is presumed the trial court considered any relevant evidence.

State v. Cazarez, 205 Ariz. 425, 72 P.3d 355, ¶ 7 (Ct. App. 2003) (defendant was 18 years old, and contended trial court erred because it did not find age was mitigating circumstance; court concluded trial court had considered age, and that was all that was required).

344.050 When the trial court makes a ruling, or in a trial to the court, the appellate court will not reverse for errors in receiving improper matters in evidence provided there is sufficient competent evidence to sustain the ruling, it being presumed, absent affirmative proof to the contrary, that the trial court considered only the competent evidence in arriving at the final judgment.

State v. Djerf, 191 Ariz. 583, 959 P.2d 1274, ¶ 41 (1998) (court rejected defendant's contention that, when trial court stated it had considered "all" evidence, it must have considered inadmissible evidence in determining aggravating circumstances).

In re Estate of Newman, 219 Ariz. 260, 196 P.3d 863, ¶ 66 (Ct. App. 2008) (in probate proceeding, appellant contended report prepared by appellee's expert witness was "replete with highly prejudicial, inflammatory, and inadmissible evidence," but failed to identify any particular statement in 14-page report to support his allegations; court held that, because trial was to court and not to jurors, it would presume trial court ignored any improper evidence).

State v. Powers, 200 Ariz. 123, 23 P.3d 668, ¶ 20 (Ct. App. 2001) (defendant contended trial court erred in admitting "emotional testimonials and evidence regarding the deceased" from victim's family and friend; court held that, absent proof to the contrary, trial judge must be presumed to be able to focus on relevant sentencing factors and to set aside irrelevant, inflammatory and emotional factors), *apprv'd on other grounds,* 200 Ariz. 363, 26 P.3d 1134 (2001).

State v. Estrada, 199 Ariz. 454, 18 P.3d 1253, ¶ 11 (Ct. App. 2001) (state and defendant presented aggravating and mitigating evidence, and trial court imposed aggravated sentence; court rejected defendant's contention that trial court was required to articulate mitigating factors even when imposing aggravated sentence, and further rejected defendant's contention that trial court had not considered mitigating evidence, stating it was presumed trial court considered all evidence that was before it).

State v. Warren, 124 Ariz. 396, 402, 604 P.2d 660, 666 (Ct. App. 1979) (although trial court improperly admitted hearsay evidence and business records without proper foundation, there was other sufficient properly-admitted evidence showing defendant breached plea agreement, thus court assumed trial court did not consider evidence not properly admitted).

348. Jurors.

348.010 Jurors are presumed to follow the trial court's instructions.

State v. Kuhs, 223 Ariz. 376, 224 P.3d 192, ¶¶ 51–55 (2010) (during guilt and aggravation phases, trial court instructed jurors not to be influenced by sympathy; during penalty phase, trial court instructed jurors not to be swayed by sympathy not related to evidence presented during penalty phase; on appeal, defendant contended trial court erred because jurors may have relied on guilt and aggravation phase instruction during penalty phase; because defendant did not object at trial, court reviewed for fundamental error only, and because jurors were presumed to follow instructions, found no error).

State v. Newell, 212 Ariz. 389, 132 P.3d 833, ¶¶ 68–69 (2006) (prosecutor made improper arguments to jurors; trial court sustained objection and instructed jurors that arguments were not evidence and to disregard anything for which trial court sustained an objection; court held in part that improper comments did not require reversal because jurors are presumed to follow trial court's instructions).

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 46, 48 (2003) (witness testified that, after defendant told her he killed three people, she encouraged him to turn himself in, to which he replied, "That's not an option; I can't go back to jail"; defendant contended this was inadmissible other act evidence and requested mistrial; as curative instruction, trial court told jurors that witness had "misspoke" and stated, "That's not appropriate; it's not what happened"; defendant contended that instruction "highlighted the testimony rather than curing it"; court stated that was risk inherent in curative instructions, but presumed jurors followed instruction and stated it would not reverse on that ground).

State v. Miles, 211 Ariz. 475, 123 P.3d 669, ¶¶ 19–22 (Ct. App. 2005) (defendant caused collision that injured victim; state charged defendant with DUI, aggravated assault, endangerment, and criminal damage; court granted motion for judgment of acquittal for DUI and instructed jurors to disregard any evidence presented to support DUI counts and any evidence about alcohol; defendant argued that jurors would have used this evidence in determining whether he acted recklessly for other counts; court noted that jurors are presumed to follow instructions, and then considered whether there was enough other evidence to support charge for which the jurors found defendant guilty).

State v. Jeffrey, 203 Ariz. 111, 50 P.3d 861, ¶¶ 17–18 (Ct. App. 2002) (during trial, evidence bag containing defendant's purse had been admitted in evidence; during deliberations, jurors found in that evidence bag bullet that had not been admitted in evidence; trial court instructed jurors

that no bullet had been found in defendant's purse and they were not to consider bullet in any way; court stated jurors were presumed to follow trial court's instruction, and that defendant had failed to establish that jurors did not follow instruction).

State v. Blackman, 201 Ariz. 529, 38 P.3d 1192, ¶ 65 (Ct. App. 2002) (trial court gave instruction that jurors were not to consider punishment).

State v. Blackman, 201 Ariz. 529, 38 P.3d 1192, ¶ 54 (Ct. App. 2002) (trial court gave instruction that jurors were to consider codefendant's statement only against codefendant).

360. Legislation.

360.015 Court presumes the Arizona Legislature intended to act with a constitutional purpose.

McMann v. City of Tucson, 202 Ariz. 468, 47 P.3d 672, ¶ 8 (Ct. App. 2002) (because charter city is sovereign in all municipal affairs when power to be exercised has been granted in charter, and because that includes sale, disposition, or use of its property, city could require party using convention center for gun show and sale to require background checks prior to any sales, thus if A.R.S. § 13-3108(A), which precludes political subdivision of state from enacting any ordinance, rule, or tax relating to transportation, possession, carrying, sale, or use of firearms, ammunition, or components, were construed to prohibit city from imposing such use condition, statute would be unconstitutional).

360.020 All legislative enactments are presumed to be constitutional, and any doubts will be resolved in favor of constitutionality; the burden of establishing that a statute is unconstitutional therefore rests upon the party challenging its validity.

State v. Mutschler, 204 Ariz. 520, 65 P.3d 469, ¶¶ 4, 16, 21 (Ct. App. 2003) (defendants were convicted of violating city code prohibiting person from operating "live sex act business," which is defined as "any business in which one or more persons may view, or may participate in, a live sex act for a consideration"; "live sex act" is defined as "any act whereby one or more persons engage in a live performance or live conduct which contains sexual contact, oral sexual contact, or sexual intercourse"; court presumed statute was constitutional and concluded it was not vague or over broad).

State v. Kaiser, 204 Ariz. 514, 65 P.3d 436, ¶¶ 17-18 (Ct. App. 2003) (officers stopped vehicle driven by defendant's wife with defendant as passenger; while investigating defendant's wife for DUI, officers told defendant to remain in vehicle; defendant refused, remained out of vehicle, and was angry, disruptive, aggressive, and profane, and made comments officers interpreted as threats; defendant was convicted of violating city code that provided that "[n]o person shall refuse to obey a peace officer engaged in the discharge of his duties"; defendant contended provision was vague and over broad; court stated that, when ordinance is challenged as being either vague or over broad, there is strong presumption provision is constitutional).

State v. Jeffrey, 203 Ariz. 111, 50 P.3d 861, ¶ 5 (Ct. App. 2002) (court presumed statute requiring defendant to prove affirmative defense (in this case duress) was constitutional and held defendant had burden of overcoming presumption).

State v. McMahon, 201 Ariz. 550, 38 P.3d 1213, ¶ 5 (Ct. App. 2002) (defendant had burden of proving statute prohibiting exhibition of speed or acceleration was vague).

State v. Navarro, 201 Ariz. 292, 34 P.3d 971, ¶ 24 (Ct. App. 2001) (defendant shot victim six times, permanently disfiguring and disabling him, and was convicted of attempted second-degree murder, which is punished the same as attempted first-degree murder; because there is reasonable basis for providing same range of punishment for both attempted first-degree murder and attempted second-degree murder and because trial court may take into consideration aggravating and mitigating circumstances to the extent there are differences in conduct, providing same sentencing range for these two offenses does not violate due process).

State v. Ochoa, 189 Ariz. 454, 943 P.2d 814 (Ct. App. 1997) (court rejected defendant's claim that A.R.S. § 13-105(8), which defines "criminal street gang member," was unconstitutional).

360.025 While generally a statute is presumed to be constitutional, when a statute impinges on core constitutional rights, the burden is shifted to the proponent of the statute to show that the statute is constitutional.

State v. Hazlett, 205 Ariz. 523, 73 P.3d 1258, ¶ 8 (Ct. App. 2003) (defendant was charged with violating A.R.S. § 13-3553, which prohibits production or use of images of "a minor" involved in sexually exploitive acts; trial court dismissed charges because it concluded statute failed to require, as element of offense, depiction of actual human being; court disagreed with trial court's interpretation of statute and held that statute did require that subject be actual living human being, and thus held statute did not violate protections of First Amendment).

360.050 The legislature is presumed to know the law when it enacts statutes.

State v. Box, 205 Ariz. 492, 73 P.3d 623, ¶ 10 (Ct. App. 2003) (court presumed that, when legislature enacted A.R.S. § 28-1594, which was enacted in 1995 and permits officer to stop vehicle and detain driver for violation and has no limitation about violation being committed in officer's presence, legislature was aware of A.R.S. § 13-3883(B), which was enacted in 1990 and provides that peace officer may stop and detain person who commits violation in officer's presence).

State ex rel. Romley v. Superior Ct. (Clements), 198 Ariz. 164, 7 P.3d 970, ¶ 7 (Ct. App. 2000) (court held that, when legislature enacted Sexually Violent Persons Act and made actions under that act civil actions, legislature was presumed to know that unanimous juries were not required in civil actions).

360.060 When the legislature amends an existing statute, it is presumed to be aware of prior judicial construction of the statute by the Arizona Supreme Court.

State v. Thompson, 201 Ariz. 273, 34 P.3d 382, ¶ 24 (Ct. App. 2001) (Arizona Supreme Court had previously held "any length of time to permit reflection" language of first-degree murder statute could be as instantaneous as time it takes to make successive thoughts; court presumed legislature was aware of that construction), *vacated,* 204 Ariz. 471, 65 P.3d 420 (2003).

360.070 When the legislature amends an existing statute and retains a term previously construed by the Arizona Supreme Court, it is presumed the legislature intended that the term would continue to have the same meaning.

State v. Thompson, 201 Ariz. 273, 34 P.3d 382, ¶ 24 (Ct. App. 2001) (Arizona Supreme Court had previously held "any length of time to permit reflection" language of first-degree murder statute could be as instantaneous as time it takes to make successive thoughts; court presumed legislature intended to keep that construction when it amended statute to provide that proof of actual reflection was not required), *vacated,* 204 Ariz. 471, 65 P.3d 420 (2003).

360.080 When the legislature modifies the language of a statute, it is presumed the legislature intended to change the existing law.

In re Kyle M., 200 Ariz. 447, 27 P.3d 804, ¶ 14 (Ct. App. 2001) (court noted previous versions of A.R.S. § 13-1202(A)(1), which prohibits threatening or intimidating, contained an intent to cause physical injury and an intent to terrify, while present version contains no culpable mental state, and held it was precluded from adding any culpable mental state to the statute).

360.090 A statute is unconstitutional if it contains a presumption that establishes an element of a criminal offense, and then requires the defendant to disprove that element.

State v. Seyrafi, 201 Ariz. 147, 32 P.3d 430, ¶¶ 8, 12 (Ct. App. 2001) (court held provision of Scottsdale City Code contained mandatory presumption and thus was unconstitutional).

362. Mailing.

362.040 If a person has a claim against a governmental entity, the person must file that claim with the appropriate person authorized to accept service, which means that person must actually receive that claim; the presumption that something that is mailed is received does, however, apply, and if plaintiff presents evidence that the claim was properly mailed, then the fact finder must then determine whether the claim was in fact received within the statutory deadline.

Lee v. State, 218 Ariz. 235, 182 P.3d 1169, ¶¶ 6-22 (2008) (plaintiffs submitted certificate of mailing stating that plaintiff's counsel's secretary sent notice of claim via regular United States mail in sealed postage-paid envelope addressed to Arizona Attorney General's Office; state submitted affidavit of Arizona Attorney General's Office employee whose job duties included maintaining log of received notices of claim stating she had searched records of Arizona Attorney General's Office and found no notice of claim submitted by plaintiffs; court held proof of mailing created material issue of fact).

368. Mental capacity.

368.040 To rebut the presumption of testamentary capacity, the burden is on the contestant to show by a preponderance of the evidence that the decedent lacked at least one of these three elements: (1) the ability to know the nature and extent of the property; (2) the ability to know his or her relation to the persons who are the natural objects of his or her bounty and whose interests are affected by the terms of the instrument; or (3) the ability to understand the nature of the testamentary act.

M.I. Marshall & Ilsley Trust v. McCannon, 188 Ariz. 562, 937 P.2d 1368 (Ct. App. 1996) (even though decedent had testamentary capacity under three-part test, she was suffering from delusional paranoid disorder that affected her perception of her nephews and niece, and this paranoid delusion was sufficient to invalidate will).

368.050 Even if the decedent had testamentary capacity under the three-part test, the will would be invalid if the decedent had an insane delusion that affected the terms of the will related to one of the three requirements.

M.I. Marshall & Ilsley Trust v. McCannon, 188 Ariz. 562, 937 P.2d 1368 (Ct. App. 1996) (even though decedent had testamentary capacity under three-part test, she was suffering from a delusional paranoid disorder that affected her perception of her nephews and niece, and this paranoid delusion was sufficient to invalidate will).

380. Property — Community.

380.030 When one spouse pays for real property from separate funds but takes title in the names of both spouses, or when a spouse places separate property in joint tenancy with the other spouse, the law presumes that the paying spouse intended to make a gift to the marital community, and the presumption can be overcome only by clear and convincing evidence.

In re Marriage of Inboden, 223 Ariz. 542, 225 P.3d 599, ¶¶ 2–10 (Ct. App. 2010) (husband and wife executed deed transferring property from themselves as separate persons to themselves as married persons as joint tenants with rights of survivorship; court acknowledged property was community property, but stated gifts merely represented equitable rights to jointly held property and did not constitute irrevocable gifts of one-half interest, and that property was subject to equitable division).

In re Marriage of Flower, 223 Ariz. 531, 225 P.3d 588, ¶¶ 15–18 (Ct. App. 2010) (husband deeded separate property to himself and wife as community property with right of survivorship; court acknowledged property was community property, but stated gifts merely represented equitable rights to jointly held property and did not constitute irrevocable gifts of one-half interest, and that property was subject to equitable division).

380.060 The presumption that all property acquired during marriage is community property (and thus that all expenditures made during marriage were for community obligations) does not apply when one spouse has made a prima facie showing of abnormal or excessive expenditures; the spouse alleging abnormal or excessive expenditures had the burden of making a prima facie showing of waste; if the spouse makes such a prima facie showing, the burden shifts to the other spouse to rebut showing of waste.

Gutierrez v. Gutierrez, 193 Ariz. 343, 972 P.2d 676, ¶¶ 6–7 (Ct. App. 1998) (husband withdrew $62,000 from community retirement account; trial court concluded husband had wasted these funds).

380.070 Parties may enter into a premarital agreement prospectively abrogating their respective rights to community property and obligations for community debts as long as the agreement is voluntary and not unconscionable when executed.

Schlaefer v. Financial Mgmt. Serv., 196 Ariz. 336, 996 P.2d 746, ¶¶ 10–13 (Ct. App. 2000) (husband and wife had valid premarital agreement keeping assets and obligations separate; because husband never signed authorization for wife's medical treatment, he was not obligated for those expenses).

Elia v. Pifer, 194 Ariz. 74, 977 P.2d 796, ¶¶ 43–46 (Ct. App. 1998) (court held prenuptial agreement was valid and insulated defendant's husband from liability that could arise from wife's conduct before marriage, thus trial court properly granted husband's motion for summary judgment)

382. Property — Real.

382.030 When the claimant has shown an open, visible, continuous, and unmolested use of the land of another for the period of time sufficient to acquire title by adverse possession, the use will be presumed to be under a claim of right, and not by license of the owner; in order to overcome this presumption, the burden is upon the owner to show that the use was permissive.

Spaulding v. Pouliot, 218 Ariz. 196, 181 P.3d 243, ¶¶ 7–27 (Ct. App. 2008) (trial court erred in using incorrect presumption that use of another's land is presumed to be with landowner's permission).

382.040 Glendale zoning ordinance Section 7(d) created a rebuttable presumption of abandonment.

City of Glendale v. Aldabbagh, 187 Ariz. 235, 928 P.2d 659 (Ct. App. 1996) *(rev. granted,* 12/17/96) (because owner's reason for not operating non-conforming use (a topless dance club) was that county attorney had seized it pending litigation, defendant was able to rebut presumption he intended to abandon non-conforming use of property).

384. Receipt of notice.

384.010 Service of notice of suspension, revocation, cancellation, disqualification, or ignition interlock device limitation is complete upon mailing to the address provided by the defendant on his application for a license, so if the state is able to prove that notice was mailed to the defendant, it is presumed that the defendant received it and had knowledge of the suspension, revocation, cancellation, disqualification, or ignition interlock device limitation notification, but the defendant may rebut this presumption.

State v. Gonzales, 206 Ariz. 469, 80 P.3d 276 (Ct. App. 2003) (court rejected defendant's contention that, because former version of statute listed only suspension and revocation, presumption did not apply to cancellation).

396. Under the influence.

396.010 Pursuant to A.R.S. § 28–1381(G), if a person has a BAC of 0.08 or more, it may be presumed the person was under the influence of intoxicating liquor; if a person has a BAC of 0.05 or less, it may be presumed the person was not under the influence of intoxicating liquor; if a person has a BAC of more than 0.05 but less than 0.08, there shall be no presumption the person was or was not under the influence of intoxicating liquor.

* *State v. Cooperman,* 230 Ariz. 245, 282 P.3d 446, ¶ 7 (Ct. App. 2012) (court makes general statement about presumption with BAC of 0.08 or more).

.010 For a charge under A.R.S. § 28–1381(A)(1), either party may introduce evidence of the defendant's BAC.

* *State v. Cooperman,* 230 Ariz. 245, 282 P.3d 446, ¶¶ 13–17 & n.6 (Ct. App. 2012) (court rejected state's argument that statutory presumptions on being under influence arose only when expressly invoked by state, and noted in footnote either party may introduce evidence of defendant's alcohol concentration, thereby triggering statutory presumptions).

.050 The statutory presumptions arise if a party introduces evidence of the defendant's BAC in a charge under A.R.S. § 28–1381(A)(1), and the trial court has a duty to so instruct the jurors if such evidence is introduced.

* *State v. Cooperman,* 230 Ariz. 245, 282 P.3d 446, ¶¶ 13–18 & n.6 (Ct. App. 2012) (court rejected state's argument that statutory presumptions on being under influence arose only when expressly invoked by state, and noted in footnote either party may introduce evidence of defendant's alcohol concentration, thereby triggering statutory presumptions). April 10, 2013